

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK,

_____X
EKMAN & CO. AB.,

Plaintiff,

Case No. 10 CV 8110 (JGK)

-against-

SO ORDERED
STIPULATION

GRAPHIC PAPER, INC.,

Defendant.

_____X
GRAPHIC PAPER, INC.,

Interpleader Plaintiff,

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DATE FILED: 6/21/11

-against-

EKMAN & CO. AB., and
U.S. BANK NATIONAL ASSOCIATION,

Interpleader Defendants.

_____X
WHEREAS on October 25, 2010, Plaintiff/ Interpleader Defendant Ekman & Co. AB. ("Ekman") filed its Complaint [Dkt # 1] against Defendant/Interpleader Plaintiff Graphic Paper, Inc. ("Graphic"), asserting a cause of action for the payment of certain invoices totaling \$1,905,885.33 plus interest (the "Invoice Claims"), and a cause of action relating to certain undelivered inventory ("Inventory Claims");

WHEREAS on November 18, 2010, Graphic filed an interpleader action against Ekman and Interpleader Defendant U.S. Bank National Association ("U.S. Bank") pursuant to Fed. R.

Civ. P. 22 and 28 U.S.C. § 1335 seeking to interplead the Invoice Claims (the "Interpleader Action");

WHEREAS on December 10, 2010, Graphic Paper deposited \$1,905,883.33 into an interest bearing account in the Court's Registry (the "Principal Deposit");

WHEREAS by making the Principal Deposit into the Court's Registry, Graphic Paper no longer claims any right to the Principal Deposit;

WHEREAS U.S. Bank has filed a cross-claim naming Graphic Paper as a Cross-claim Defendant and which seeks, in part, payment of the Principal Deposit (the "U.S. Bank Cross-Claim");

WHEREAS on December 10, 2010, Ekman filed a motion to dismiss the Interpleader Action (the "Motion to Dismiss");

WHEREAS on April 14, 2011, the Court denied the Motion to Dismiss [See Dkt # 28] and permitted the Interpleader Action to proceed under Fed. R. Civ. P. 22 (Count I), and also permitted the Interpleader Action to proceed under 28 U.S.C. § 1335 (Count II) pending the deposit of the relevant interest requested by Ekman;

WHEREAS on May 3, 2011, the Court entered an agreed order permitting Graphic to make an additional deposit of \$31,517.21 representing the interest set forth in Ekman's Complaint;

WHEREAS on May 5, 2011, Graphic Paper deposited \$31,517.21 into an interest bearing account in the Court's Registry (the "Interest Deposit")

WHEREAS Ekman now asserts that in addition to the Interest Deposit it has the right to recover \$31,449.49 of post-October 20th interest from Graphic Paper (the "Additional

Interest")(Ekman's claim to recover the Interest Deposit and Additional Interest are collectively, referred to as the "Interest Claims");

WHEREAS the Interest Deposit was deposited into the Court's Registry by Graphic Paper after a mutual miscommunication by the parties as to the total amount of the Interest Claim and was thus made in error;

NOW THEREFORE, in consideration of the mutual covenants contained herein, it is hereby stipulated and agreed, by and between counsel for Ekman, Graphic Paper, and U.S. Bank that Graphic Paper is dismissed with prejudice with respect to the Invoice Claims, but not with respect to the Interest Claims or the Inventory Claims;

IT IS FURTHER STIPULATED AND AGREED that Graphic Paper is dismissed with prejudice with respect to the U.S. Bank Cross-Claim;

IT IS FURTHER STIPULATED AND AGREED that Graphic Paper be permitted to withdraw the Interest Deposit from the Court's Registry, the deposit having been made based upon a mutual miscommunication of the amount of the total Interest Claimed by Ekman;

IT IS FURTHER STIPULATED AND AGREED that Count II be dismissed without prejudice in accordance with the Court's April 14, 2011, Order;

IT IS FURTHER STIPULATED AND AGREED that this stipulation shall not constitute a waiver, or prejudice of Graphic Paper's right to seek attorneys' fees and costs associated with the Interpleader Action, or Graphic Paper's right to assert claims against U.S. Bank for any damages awarded against it;

IT IS FURTHER STIPULATED AND AGREED that this stipulation shall not constitute a waiver, or prejudice, of U.S. Bank's (i) claim to the Principal Deposit and any applicable interest thereon; (ii) right to seek attorneys' fees and costs associated with the

Interpleader Action or pursuant to applicable law in connection with the collection of a judgment; and (iii) right to assert claims against any of the parties hereto for any damages awarded;

IT IS FURTHER STIPULATED AND AGREED that this stipulation shall not constitute a waiver, or prejudice of Ekman's right to seek attorneys' fees and costs associated with the Interpleader Action;

IT IS FURTHER STIPULATED AND AGREED that this stipulation may be executed in counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same document. Facsimile signatures or signatures emailed in portable document format (.pdf) shall be acceptable and deemed binding on the parties hereto as if they were originals.

Dated: Garden City, New York
June 16, 2011

ETTELMAN & HOCHHEISER, P.C.

BY: 

Gary Ettelman
gettelman@e-hlaw.com
Joshua Steven Stern
js Stern@e-hlaw.com
100 Quentin Roosevelt Blvd. Suite 401
Garden City, New York 11530
Tel.: (516) 227-6300
Fax: (516) 227-6307
*Attorneys for Defendant-Interpleader
Plaintiff Graphic Paper, Inc.*

DUANE MORRIS LLP

BY: 

Anthony J. Costantini
AJCostantini@duanemorris.com
Mairi V. Luce
mvluce@duanemorris.com
1540 Broadway
New York, New York 10036
Tel.: (212) 692-1000
Fax: (212) 692-1020
*Attorneys for Plaintiff-Interpleader
Defendant Ekman & Co AB*

SO ORDERED:


U.S.D.J.

6/21/11

WILK AUSLANDER LLP

BY: 

Jessica Taran

jtaran@wilkanslander.com

Joseph Zelmanovitz, of Counsel

675 Third Avenue

New York, New York 10017

Tel.: (212) 421-2233 x2313

Fax: (212) 752-6380

Attorneys for Interpleader Defendant U.S.

Bank National Association

SO ORDERED:

Hon. John G. Koeltl, U.S.D.J.